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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

MAR 06 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Federal-State Joint Board on )  
Universal Service )  
 )  
Rural Telephone Companies Seek )  
Removal of Individual Caps Placed )  
On High Cost Loop Support )

CC Docket No. 96-45

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Reply Comments of

Sunflower Telephone Company, Inc. and Bluestem Telephone Company, S&T Telephone Cooperative Association, Inc. and S&T Communications of Dighton, Inc., Golden Belt Telephone Association, Inc. Northeast Missouri Rural Telephone Company and Modern Telecommunications Company, Interstate Telecommunications Cooperative, Inc. and Intrastate Telephone Company, Inc., Hanson Communications, Inc. and Fort Randall Telephone Company and Mt. Rushmore Telephone Company, Midstate Telephone Company and Heartland Communications, Inc., Mobridge Telecommunications Company, Hanson County Telephone, Inc., Hanson Communications, Inc. dba McCook Telecom, Splitrock Telecom Cooperative, Inc. and Splitrock Properties, Inc.

These reply comments are filed jointly on behalf of the above-listed incumbent local exchange carriers ("Petitioners"), each of which has petitioned the Commission to remove the individual caps which have been placed on the high-cost loop support which they draw from the federal Universal Service Fund ("USF").<sup>1</sup> The Petitioners are responding to the Commission's Public Notice in this proceeding dated January 24, 2000, which solicited comments addressing the Petitioner's requests as well as those of many

<sup>1</sup> See Sunflower Telephone Company and Bluestem Telephone Company, S&T Telephone Cooperative Association, Inc. and S&T Communications of Dighton, Inc., Golden Belt Telephone Association, Inc. Northeast Missouri Rural Telephone Company and Modern Telecommunications Company, Petition for Removal of Individual Caps on High Cost Loop Support, CC Dkt. 96-45 (filed Nov. 4, 1999) and Interstate Telecommunications Cooperative, Inc. and Intrastate Telephone Company, Inc., Hanson Communications, Inc. and Fort Randall Telephone Company and Mt. Rushmore Telephone Company, Midstate Telephone Company and Heartland Communications, Inc., Mobridge Telecommunications Company, Hanson County Telephone, Inc. and Hanson Communications, Inc. dba McCook Telecom, Splitrock Telecom Cooperative, Inc. and Splitrock Properties, Petition for Removal of Individual Caps on High Cost Loop Support, CC Dkt. 96-45 (filed Nov. 15, 1999).

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similarly situated rural carriers which also wish to have their individual USF caps removed (“Public Notice”).

**I.     The Request of the Montana Telecommunications Association  
Must Be Addressed Separately From the Merits of This Proceeding**

Of the entities which have submitted comments responding to the Public Notice, the Petitioners are only aware of one party – the Montana Telecommunications Association (“MTA”) – which has opposed the requests of the Petitioners and the other rural carriers on any basis. In principle, the MTA does not oppose lifting the individual USF caps.<sup>2</sup> The MTA asserts the concern, however, that if carriers’ individual caps are waived, it will “reduce the [USF] support available to maintain investment in other network infrastructure by all other companies.”<sup>3</sup> On this basis, the MTA recommends that the Commission not grant relief to the Petitioners and the other rural carriers which have requested waivers “without lifting the overall universal service cap imposed on high cost companies and their customers.”<sup>4</sup>

The Petitioners agree in principal with the MTA that the interim cap placed on universal service funding for all carriers should be lifted. As the MTA correctly points out, there are sound policy reasons for doing so. With the aid of the USF program, the companies which purchased long-neglected rural exchanges from U S West have performed a true public service by upgrading their facilities, and vastly improving the quality of service offered to thousands of people in states such as Montana.

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<sup>2</sup>     See MTA Comments at 5. The MTA concurs that the USF caps restrict the ability of similarly situated companies to invest in newly-acquired exchanges, to the detriment of customers. Id.

<sup>3</sup>     Id. at 3-6.

<sup>4</sup>     Id. at 6.

The Petitioners disagree with the MTA that this is the proper proceeding in which to address lifting the overall USF funding cap, however. That assertion raises a general policy issue which is separate from the sole issue presented in this proceeding – which is whether the Petitioners and other requesting parties are similarly situated to the carriers addressed in the Commission’s Memorandum Opinion And Order On Reconsideration (Copper Valley Telephone, Inc. et al.), DA 99-1845, released September 9, 1999 (“Individual High Cost Removal Order”), and must therefore receive comparable treatment.<sup>5</sup>

As the Commission is aware, in the Individual High Cost Cap Removal Order, the Commission’s Common Carrier Bureau (“Bureau”) removed the individual high cost loop support caps imposed on various North Dakota, South Dakota, Idaho, Arizona and Vermont rural telephone companies in connection with study area waivers granted by the Division during 1996. The Bureau concluded that it was unnecessary to limit these carriers in perpetuity to the high cost loop support which they estimated in their original petitions, and concluded that “in that time, the individual caps placed on the carriers’ high cost loop support have served their purpose by preventing the carriers from underestimating the effect the transfer of exchanges would have on the high cost loop support mechanism immediately following the transfer.”<sup>6</sup> The Bureau also reached the general conclusion that “caps of unlimited duration may hinder [rural telephone

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<sup>5</sup> See Melody Music, Inc. v. FCC, 345 F. 2d 730 (D.C. Cir. 1965) and McElroy Electronics Corp. v. FCC, 990 F.2d 1351, 1365 (D.C. Cir. 1993)(requiring the Commission to treat similarly-situated parties in a similar manner).

<sup>6</sup> See Individual High Cost Removal Order at ¶ 10.

company] incentive and ability to extend service to previously unserved areas, as well as to upgrade service to their existing customers.”<sup>7</sup>

In the present case, under the precedent presented by Melody Music and similar cases, the Commission’s analysis of whether to lift the USF caps placed on the Petitioners and the other carriers must be based on a comparison of whether they are “similarly situated” to the carriers addressed in the Individual High Cost Cap Removal Order. As a matter of law under Melody Music and similar cases, consistent decision-making requires that the Commission may not introduce other policy considerations into this comparison. It is therefore apparent that the Commission must address the merits of the MTA’s proposal separately. At least for purposes of this proceeding, the MTA’s objection to lifting the USF caps on the Petitioners and other carriers should be dismissed.

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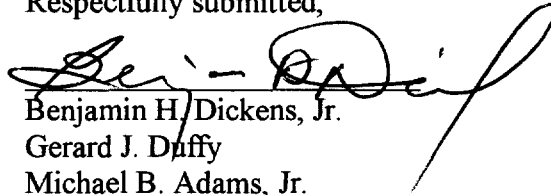
<sup>7</sup>

Id.

## II. Conclusion

For the reasons described above, the Petitioners encourage the Commission to deny the MTA's request to expand the scope of this proceeding. As set forth in their petition, the Petitioners have already demonstrated that they are similarly situated to the carriers addressed in the Individual High Cost Cap Removal Order. Therefore, the existing caps on the Petitioners' high cost loop support should be eliminated, and the Petitioners should be allowed to thereafter receive high cost loop support on the basis of the average cost of all of their lines in the affected study areas.

Respectfully submitted,



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March 6, 2000

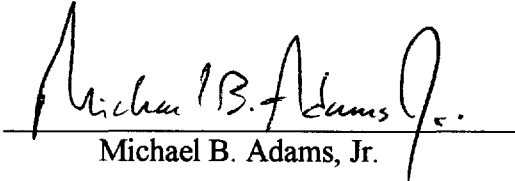
**CERTIFICATE OF SERVICE**

I, Michael B. Adams, Jr., hereby certify that I am an attorney with the law firm of Blooston, Mordkofsky, Jackson & Dickens and that a copy of the foregoing Reply Comments was served this 6th day of March 2000, by messenger to the persons listed below.

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